

104TH CONGRESS
1ST SESSION

H. R. 1201

To amend the Public Health Service Act to prohibit health insurance discrimination with respect to victims of domestic violence.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1995

Mr. WYDEN (for himself, Mr. SCHUMER, and Mrs. MORELLA) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Public Health Service Act to prohibit health insurance discrimination with respect to victims of domestic violence.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Insurance Protection
5 for Victims of Domestic Violence Act”.

1 **SEC. 2. PROHIBITION OF HEALTH INSURANCE DISCRIMINA-**
2 **TION WITH RESPECT TO VICTIMS OF DOMES-**
3 **TIC VIOLENCE.**

4 The Public Health Service Act (42 U.S.C. 201 et
5 seq.) is amended by adding at the end the following new
6 title:

7 **“TITLE XXVII—PROHIBITION OF**
8 **HEALTH INSURANCE DIS-**
9 **CRIMINATION WITH RESPECT**
10 **TO VICTIMS OF DOMESTIC VI-**
11 **OLENCE**

12 **“SEC. 2701. LIMITATIONS ON UNDERWRITING.**

13 “No insurer may engage in a practice that has the
14 effect of denying, canceling, or not renewing health insur-
15 ance coverage or health benefits, or establishing, increas-
16 ing, or varying the premium charged for the coverage or
17 benefits or excluding health coverage with respect to
18 health care items or services related to treatment of a con-
19 dition—

20 “(1) to an individual on the basis that the indi-
21 vidual or family member is, has been, or may be the
22 subject of abuse, has had prior injuries that resulted
23 from abuse, or seeks, has sought, or should have
24 sought medical or psychological treatment for pro-
25 tection against abuse, or shelter from abuse; or

1 “(2) to or for a group or employer on the basis
2 that the group includes or the employer employs, or
3 provides or subsidizes insurance for, an individual
4 described in paragraph (1).

5 **“SEC. 2702. ESTABLISHMENT OF STANDARDS.**

6 “(a) ROLE OF NATIONAL ASSOCIATION OF INSUR-
7 ANCE COMMISSIONERS.—

8 “(1) IN GENERAL.—The Secretary shall request
9 the National Association of Insurance Commis-
10 sioners to develop, in consultation with nonprofit do-
11 mestic violence victim advocacy organizations, within
12 9 months after the date of the enactment of this
13 title, model standards that incorporate the limita-
14 tions on underwriting set forth in section 2701, and
15 provide procedures for enforcement for such provi-
16 sions, including a private right of action.

17 “(2) REVIEW OF STANDARDS.—If the Associa-
18 tion develops recommended regulations specifying
19 the standards within the period, the Secretary shall
20 review the standards. The review shall be completed
21 within 90 days after the date the regulations are de-
22 veloped. Unless the Secretary determines within the
23 period that such standards do not meet the require-
24 ments, such standards shall serve as the standards

1 under this title, with such amendments as the Sec-
2 retary determines to be necessary.

3 “(b) CONTINGENCY.—If the Association does not de-
4 velop the model regulations within the 9 month period be-
5 ginning on the date of the enactment of this title, or the
6 Secretary determines that the regulations do not specify
7 standards that meet the requirements described in sub-
8 section (a), the Secretary shall specify, within 15 months
9 after the date of the enactment of this title, standards to
10 carry out the requirements.

11 “(c) APPLICATION OF STANDARDS.—

12 “(1) IN GENERAL.—Each State shall submit to
13 the Secretary, by the deadline specified in paragraph
14 (2), a report on actions the State is taking to imple-
15 ment and enforce the standards established under
16 this section with respect to insurers and health in-
17 surance coverage offered or renewed not later than
18 such deadline.

19 “(2) DEADLINE FOR REPORT.—Each State
20 shall file the report described in paragraph (1) not
21 later than 1 year after the date that standards are
22 established under subsection (a) or, in the event of
23 the failure of the Association to develop timely model
24 regulations, under subsection (b).

25 “(d) FEDERAL ROLE.—

1 “(1) NOTICE OF DEFICIENCY.—If the Secretary
2 determines that a State has failed to submit a report
3 by the deadline specified by subsection (c), or finds
4 that the State has not implemented and provided
5 adequate enforcement of the standards established
6 under subsection (a) or (b), the Secretary shall no-
7 tify the State and provide the State a period of 60
8 days in which to submit the report.

9 “(2) IMPLEMENTATION OF ALTERNATIVE EN-
10 FORCEMENT MECHANISM.—

11 “(A) IN GENERAL.—If, after the 60-day
12 period, the Secretary finds that such a failure
13 has not been corrected, the Secretary shall
14 within 30 days provide for a mechanism for the
15 implementation and enforcement of such stand-
16 ards in the State as the Secretary determines to
17 be appropriate.

18 “(B) CIVIL PENALTY.—Under any imple-
19 mentation and enforcement mechanism estab-
20 lished by the Secretary pursuant to this para-
21 graph, the Secretary shall have the authority to
22 impose on an insurer a civil monetary penalty
23 in the amount of \$10,000 for each day during
24 which such insurer violates the requirements
25 described in section 2701, or the standards de-

veloped under this section. Liability for such penalty shall begin to accrue on the 30th day after the Secretary has provided such insurer with notice of its noncompliance, if the insurer has failed to correct the deficiency by such date.

“(C) EFFECTIVE PERIOD.—Any such implementation and enforcement mechanism established by the Secretary shall take effect with respect to insurers, and health insurance coverage offered or renewed, on or after 3 months after the date of the Secretary’s finding under paragraph (1), and until the date the Secretary finds that such a failure has been corrected.

“(3) FEDERAL CIVIL RIGHT OF ACTION.—

“(A) IN GENERAL.—Any individual aggrieved as a result of conduct prohibited by section 2701 may bring a civil action in the appropriate United States district court against the insurer.

“(B) RELIEF.—Upon proof of such conduct by a preponderance of the evidence, the insurer shall be subject to a civil penalty that may include temporary, preliminary, or permanent injunctive relief and compensatory and punitive damages,

1 as well as the costs of suit and reasonable
2 fees for the aggrieved individual's attor-
3 neys. With respect to compensatory dam-
4 ages, the aggrieved individual may elect, at
5 any time prior to the rendering of final
6 judgment, to recover in lieu of actual dam-
7 ages, an award of statutory damages in the
8 amount of \$5,000 for each violation.

9 **“SEC. 2703. APPLICATION TO GROUP HEALTH PLANS AND**
10 **ENFORCEMENT.**

11 “(a) APPLICATION.—Subject to subsection (b), the
12 prohibitions in section 2701 and the standards developed
13 under section 2702 shall apply to group health plans pro-
14 viding health coverage in the same manner as they apply
15 to insurers providing health insurance coverage. The pen-
16 alty described in section 2702(d)(2)(B) may be imposed
17 by the Secretary of Labor on group health plans that are
18 not in compliance with the requirements of sections 2701
19 and 2702.

20 “(b) SUBSTITUTION OF FEDERAL OFFICIALS.—For
21 purposes of subsection (a), any reference in section 2702
22 to—

23 “(1) a State or the Secretary of Health and
24 Human Services is deemed to be a reference to the
25 Secretary of Labor; and

1 “(2) an insurer or health insurance coverage is
2 deemed to be a reference to a group health plan and
3 health coverage, respectively.

4 “(c) ENFORCEMENT.—For purposes of part 5 of sub-
5 title B of title I of the Employee Retirement Income Secu-
6 rity Act of 1974 (29 U.S.C 1131 et seq.) the provisions
7 of this title insofar as they relate to group health plans
8 shall be deemed to be provisions of title I of such Act irre-
9 spective of exclusions under section 4(b) of such Act.

10 “(d) REGULATORY AUTHORITY.—With respect to the
11 regulatory authority of the Secretary of Labor under this
12 title pursuant to subsection (c), section 505 of the Em-
13 ployee Retirement Income Security Act of 1974 (29
14 U.S.C. 1135) shall apply.

15 **“SEC. 2704. DEFINITIONS.**

16 “For purposes of this title:

17 “(1) ASSOCIATION.—The term ‘Association’
18 means the National Association of Insurance Com-
19 missioners.

20 “(2) INSURER.—

21 “(A) IN GENERAL.—The term ‘insurer’
22 means a health benefit plan or a health care
23 provider that conducts activities related to the
24 protection of public health.

1 “(B) HEALTH BENEFIT PLAN.—The term
2 ‘health benefit plan’ means any public or pri-
3 vate entity or program that provides for pay-
4 ments for health care, including—

5 “(i) a group health plan (as defined in
6 section 607 of the Employee Retirement
7 Income Security Act of 1974 (29 U.S.C.
8 1167)) or a multiple employer welfare ar-
9 rangement (as defined in section 3(40) of
10 such Act) that provides health benefits;
11 and

12 “(ii) any other health insurance ar-
13 rangement, including any arrangement
14 consisting of a hospital or medical expense
15 incurred policy or certificate, hospital or
16 medical service plan contract, or health
17 maintenance organization subscriber con-
18 tract.

19 “(C) HEALTH CARE PROVIDER.—The term
20 ‘health care provider’ means a provider of serv-
21 ices (as defined in section 1861(u) of the Social
22 Security Act (42 U.S.C. 1395u)), a physician,
23 a supplier, or any other person furnishing
24 health care, including a Federal or State pro-

1 gram that provides directly for the provision of
2 health care to beneficiaries.

3 “(3) VICTIM OF ABUSE.—The term ‘victim of
4 abuse’ means the occurrence of one or more of the
5 following acts between family or household members,
6 current or former sexual or intimate partners, or
7 persons sharing biological parenthood—

8 “(A) attempting to cause or intentionally,
9 knowingly, or recklessly causing bodily injury,
10 rape, or sexual abuse as such term is defined in
11 section 2242 of title 18, United States Code.

12 “(B) placing, by physical menace, another
13 individual in reasonable fear of imminent seri-
14 ous bodily injury;

15 “(C) infliction of false imprisonment; or

16 “(D) physically or sexually abusing minor
17 children.”.

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